

JUL 01 2011

CITY OF DUVALL

**INTERAGENCY AGREEMENT
BETWEEN KING COUNTY AND THE CITY OF DUVALL
REGARDING IMPROVEMENTS TO
NE CHERRY VALLEY ROAD**

THIS AGREEMENT is made and entered into by and between King County, a political subdivision of the State of Washington ("the County"), and the City of Duvall ("the City") regarding improvements to NE Cherry Valley Road in unincorporated King County. The County and the City are collectively referred to as "the Parties."

RECITALS

- A. The City has a capital improvement project, "Cherry Valley Road, Main Street to 3rd Avenue" (the "Project") to design and construct pedestrian and bicycle improvements on Northeast Cherry Valley Road from Northeast Allen Street to 3rd Avenue Northeast.
- B. A segment of the Project is located within unincorporated King County. This segment is from NE Allen Street to the unimproved 1st Ave NE right-of-way. The remainder of the project is located within City of Duvall right-of-way.
- C. The City desires to construct a sidewalk and bicycle lane on the south side of NE Cherry Valley Road and include the segment in the Project within unincorporated King County.
- D. The Project is located east and west of a separate sidewalk and bicycle facilities project being constructed as part of the Cherry Valley Elementary Project.
- E. The Project will provide safe walking facilities for Cherry Valley Elementary School, which is located within the Project limits.
- F. The City has identified full funding for design and construction of the Project in its Capital Improvement Program, and has obtained a Transportation Improvement Board (TIB) grant to complete the Project. See Exhibit A.
- G. The City is willing to take ownership of the segment of the Project that is now in unincorporated King County.
- H. It is in the best interests of the City and the County to complete the Project and provide uninterrupted improvements within the Project limits.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. PURPOSE

The purpose of this Agreement is to set forth the Parties' respective roles and responsibilities relating to the Project.

2. SCOPE OF WORK

The scope of work for the Project includes design and construction of a sidewalk and bicycle lane on the south side of Northeast Cherry Valley Road from Northeast Allen Street to 3rd Avenue Northeast. The improvements installed with the unincorporated King County right-of-way span approximately 480 linear feet within the Project.

3 GENERAL RESPONSIBILITIES

- 3.1 All improvements related to the Project shall be completed in accordance with City of Duvall and King County Road Standards and all applicable requirements including but not limited to King County Code Titles 14 and 21A.
- 3.2 The City shall be the lead agency for the Project with regard to plans, specifications, estimates (PS&E), environmental review, right-of-way acquisition, permitting and construction.
- 3.3 The City shall obtain a Right-of-Way Use Permit in accordance with King County Code 14.28.
- 3.4 The County Road Services Division shall perform all inspections related to the County segment of the Project and provide any comments or corrections to the City inspector.
- 3.5 The City shall update the County on its progress in designing and constructing the Project at a mutually agreeable time.
- 3.6 The County hereby grants the City right of entry into the jurisdiction of the County for the purpose of performing any and all tasks necessary to implement this Agreement.
- 3.7 The County Road Services Division Director or designee and the City Public Works Director or designee shall serve as liaison for the purpose of this Agreement. The designated contact persons shall meet on an "as needed" basis to provide guidance for the Project and serve as a coordination body between the Parties.

4. CONSTRUCTION CONTRACT BIDDING

- 4.1 The City shall provide the County a minimum of one copy of the plans and

specifications advertised for bid, and an electronic file of the contract documents.

4.1.1 The city shall obtain a County ROW use permit for the County portion of the Project prior to advertisement.

- 4.2 The City shall comply with Duvall Municipal Code 3.12.050 in awarding the contract for the Project.
- 4.3 The City shall open the bids and shall notify the County of the time and date of the bid opening, which is typically two to three weeks after the Project is advertised. The County may attend the opening of the bids.
- 4.4 The City shall award the contract to the lowest responsible bidder for the total Project subject to applicable laws and regulations.
- 4.5 The City shall require that the County is included as an additional insured on the Project contractor(s) insurance policy(s), and that the County is included in the Project contract(s) indemnification provisions and receives the same protection as received by the City.
- 4.6 The City assures the County that its procedures are consistent with applicable laws relating to public contract bidding procedures, and the County neither incurs nor assumes any responsibility for the City's bid, award or contracting process.
- 4.7 In connection with this Agreement, neither the City nor any party contracting or subcontracting in connection with the Project shall discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age or the presence of any sensory, mental or physical handicap in employment or application for employment or in the administration of the delivery of services or any other benefits under this Agreement. The City shall comply fully with all applicable Federal, State, and local laws, ordinances, executive orders and regulations that prohibit such discrimination.

5. CONTRACT ADMINISTRATION

- 5.1 The City shall provide the necessary engineering, administrative, inspection, clerical and other services necessary for the completion of the Project.
- 5.2 The City shall provide lead inspection services for the project. The County shall furnish an inspector at the City's expense, to periodically monitor compliance with requirements during the construction of the Project within the County owned right-of-way. The County's inspector shall advise the City of any deficiencies from the approved construction plans.
- 5.3 Prior to the Project completion, the Parties shall perform a mutual final inspection of the Project. Final acceptance of the County segment of the Project shall be by the County Road Engineer or designee.

6. PAYMENT

- 6.1 The City shall be responsible for the full cost of the Project including, but not limited to, design, construction, and inspection.
- 6.2 The City shall reimburse the County for all costs to inspect the County segment of the Project.
- 6.3 The County shall establish a budget of \$1,500 for the cost of right-of-way inspection. The County shall notify the City if the cost of inspection exceeds \$1,500.

7. BOUNDARY ADJUSTMENT

The City and the County will work together to effect a boundary adjustment in which the City takes ownership of the segment that is currently within unincorporated King.

8. DURATION/TERMINATION

- 8.1 This Agreement shall remain in effect until final acceptance of the Project by the County and the City.
- 8.2 If expected or actual funding is withdrawn, reduced or limited in any way, or if Federal funding requirements affect the Project, prior to the completion of the Project, either party may, with thirty (30) days written notice to the other party, terminate this Agreement.
- 8.3 In the event of termination prior to completion of the Project, the party requesting termination shall pay all direct and indirect phasing-out costs. Payable termination costs shall not exceed the actual costs incurred as a result of termination of this Agreement.
- 8.4 Either party may terminate this Agreement for default in the event the other party materially breaches this Agreement. Termination shall be effected by serving a Notice of Termination by certified mail, return receipt requested, on the other party setting forth the manner in which said party is in default and the effective date of termination, which shall not be less than fourteen (14) calendar days after the date of the notice; provided, however, such termination shall not take effect if the default has been cured within seven (8) calendar days after the date of the notice of termination.

9. INDEMNIFICATION AND DEFENSE

- 9.1 Each party shall protect, defend, indemnify and save harmless the other party, its officers, officials, employees and agents while acting within the scope of their employment as such, from any and all suits, costs, claims, actions, losses, penalties, judgments, and/or awards of damages, of whatsoever kind arising out of, or in connection with, or incident to the services associated with this Agreement caused by or resulting from each party's own negligent acts or

omissions. The City agrees that it is fully responsible for the acts and omissions of the Project Contractor, the Project Contractor's subcontractors, its own subcontractors, their employees and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. Each party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each party's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

10. DISPUTE RESOLUTION

- 10.1 In the event of a contractual dispute between the Parties regarding this Agreement, the Parties shall attempt to resolve the matter informally. If the Parties are unable to resolve the matter informally, the matter shall be forwarded for discussions to the Director of King County's Road Services Division, and the City Administrator, or their respective designee(s). If this process fails to resolve the dispute within thirty (30) days after such referral, a Party may pursue any legal remedy available or the Parties may agree to submit the matter to mediation or other alternate dispute resolution.
- 10.2 If the Parties submit the matter to alternate dispute resolution and the matter is not resolved, a Party shall be entitled to pursue any legal remedy available in a court of law. In the event that either of the parties deem it necessary to institute legal actions or proceedings to enforce any right or obligation under this Agreement, the Parties hereto agree that any such action shall be initiated in King County Superior Court of the State of Washington. This Agreement shall be interpreted and construed in accordance with the laws of the State of Washington. The City hereby consents to the personal jurisdiction of the King County Superior Court of the State of Washington.
- 10.3 Unless otherwise expressly agreed to by the Parties in writing, both the City and the County shall continue to perform all their respective obligations under this Agreement during the resolution of the dispute.

11. AUDITS AND INSPECTIONS

- 11.1 The records and documents with respect to all matters covered by this Agreement shall be subject to inspection, review or audit by the County or the City during the term of this Agreement and three years after termination.
- 11.2 Audits and inspections shall be the responsibility of the City. The County shall support the City in meeting audit and inspection requirements.

12. OTHER PROVISIONS

- 12.1 Severability. A determination by a court of competent jurisdiction that any provision of this Agreement or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such provision of this Agreement, which shall remain in full force and effect.
- 12.2 Interpretation. The captions of the Sections or Paragraphs of this Agreement are not a part of the terms or provisions of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other.
- 12.3 Waivers. All waivers shall be in writing and signed by the waiving party. Either party's failure to enforce any provision of this Agreement shall not be a waiver and shall not prevent either party from enforcing that provision or any other provision of this Agreement in the future.
- 12.4 Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any prior or subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 12.5 Force Majeure. If either party cannot perform any of its obligations due to events beyond its reasonable control (other than the payment of money), the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Events beyond a party's reasonable control include, but are not limited to, acts of God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of labor or materials, government regulations or restrictions and weather conditions.
- 12.6 Joint Drafting Effort. This Contract shall be considered for all purposes as prepared by the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- 12.7 Third Party Beneficiaries. Nothing in this Agreement is intended to, nor shall be construed to give any rights or benefits in the Agreement to anyone other than the City and the County, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the City and the County and not for the benefit of any other party.

- 12.8 This Agreement contains the entire agreement of the parties and any representations or understandings, whether oral or written, not incorporated herein are excluded.
- 12.9 This Agreement may be amended only by an instrument in writing, duly executed by both parties.

IN WITNESS WHEREOF, the parties have entered into this Agreement effective as of the date last written below.

KING COUNTY

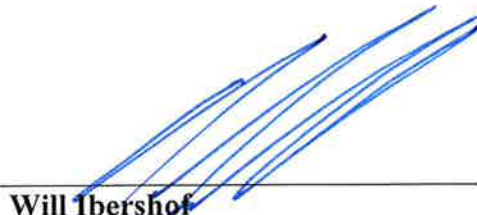


Paulette Norman
Interim King County Road Services
Division Director

6/28/11

Date

CITY OF DUVALL

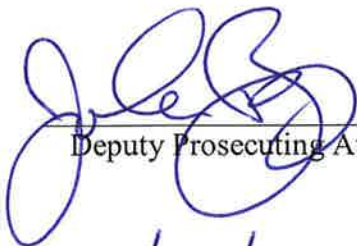


Will Ibershof
Mayor of Duvall

6/9/11

Date

APPROVED AS TO FORM:



Deputy Prosecuting Attorney

6/27/2011

APPROVED AS TO FORM:



City Attorney

6/20/11

Date

EXHIBIT A

Project Budget – Capital Improvement Project: “Cherry Valley Road, Main Street to 3rd Avenue”

Funding Source	Purpose	Amount
Transportation Improvement Board	Design and partial construction	\$228,000
City of Duvall (estimate)	Construction	\$100,000
Total		\$378,000